the 1st floor" which the plaintiff sub-let to Ram Naresh is a hall some 25′ x 12′. Ram Naresh used this hall, to the knowledge of the plaintiff but in spite of a protest by him, for taking in lodgers. Some of the lodgers were temporary, who were passing through Singapore on their way to and from India. Some 5 or 6 others, of whom the defendant was one, were (according to the defendant) permanent. There were no partitions in this hall. The temporary lodgers slept on the floor. The permanent ones enjoyed the amenities of a charpoy and a box. It is the somewhat restricted space occupied by his charpoy and his box which the defendant says he holds on a contract of subtenancy (according to his pleading) or of sub-subtenancy according to his case in Court.

I can see no evidence whatever — and not even in the defendant's own testimony — of any such contract either between the defendant and the plaintiff or between the defendant and Ram Naresh. Of any contractual relationship with the plaintiff there is no suggestion (except in his pleading). And if there was any contractual relationship with Ram Naresh it was that of a lodger (one of many). He appears to have paid Ram Naresh $1.50 for the month of August 1947. There is no evidence of what further sums he paid (if any). I shall assess the mesne profits at $1.50 per month.

There must be judgment for the plaintiff for :—

(1) Possession as claimed, possession to be given on or before the 31st August;

(2) $12.00 mesne profits, at $1.50 per month for 8 months;

(3) Costs.

Judgment for the plaintiff.

TAN KEE GUAN v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J., Brown and Gordon-Smith, JJ.) September 1, 1949]

[Singapore — Mag. Appl. No. 59 of 1949]

Criminal Procedure Code, s. 306(3) — Consideration of the legality or propriety of an order for forfeiture — Singapore Essential Regulations, Regulation 81 — Several offences arising out of the same subject matter — Punishment — Venue of Trial.

Where the penalties provided for breach of any law include the forfeiture of goods concerned in the crime, it is an improper exercise of the discretion vested in a District Judge to order forfeiture when the value of the goods to be forfeited is out of all proportion to the maximum sentence which he is entitled to inflict. In cases where the prosecution intend to press for a severe penalty, including the forfeiture of goods which far exceed the amount of the fine which may be imposed by a District Court, then the trial should be before the Supreme Court. This is particularly so where, as in the case of breaches of the Essential Regulations, higher penalties may be imposed by the Supreme Court than in the District Court.

Where an accused person is charged with several offences arising out of the same subject matter, then each separate and distinct offence, if they are really separate and distinct offences, should be punished separately.

CRIMINAL REFERENCE TO FULL COURT.

D. K. Walters (*Wee Chong Jin* with him) for Appellant.

Simpson (D. P. P.) for the Crown.

The facts sufficiently appear from Judgment of the Court given by :—

Brown, J. : — This appeal was reserved under the provision of section 306(3) of the Criminal Procedure Code for our consideration of the legality or propriety of the order for forfeiture. The appellant was convicted by the learned District Judge upon four charges. The maximum sentence (apart from the forfeiture) which it would have been competent for him to impose on the first charge was 6 months' imprisonment or a fine of $1,000.00 or both (G. N. No. S 81 of the Gazette Supplement dated 26th July 1946). Upon the remaining three charges the maximum sentence was in each case a fine of $1,000.00. He imposed a fine of $500.00 on the first charge, and taking the view that all 4 charges were related he imposed a nominal fine of $10.00 on each of the remaining three. But in the case of the first charge, which was under section 3 of the Prohibition of Exports Order, 1946, he availed himself of the amendment to Regulation 81 of the Singapore Essential Regulations, which was made by G. N. No. S 276 of the Gazette Supplement dated 12th August 1947, and, in addition to the fine of $500.00, he ordered the goods to be forfeited. It is not disputed that the value of the sulphate of ammonia, which was thus ordered to be forfeited, was $70,000.00.

Mr. Walters first contested the legality of the order for forfeiture upon the ground that the amendment made by G. N. No. S 276 of 1947 was *ultra vires*. He said that it was contrary to the provision of Magna Carta. The answer to that can only be that emergency legislation sometimes is. In order to meet the emergency, extraordinary powers of legislation are conferred upon certain authorities, and we can only ask ourselves if the authority which made the amendment contained in G. N. No. S 276 of 1947 was acting within the legislative powers conferred upon him by the Singapore Essential Regulations Proclamation (G.

N. No. 281 of the B.M.A. Gazette dated 29th March 1946). We have no doubt that the amendment is within the powers conferred by section 3 (1) (k) of the Proclamation. The authority is thereby empowered to prescribe "penalties" for any offences against the regulations. The word "penalties" is used alone, and we see no reason to limit its meaning by excluding the penalty of forfeiture.

But by Reg. 81 of the Essential Regulations as amended by G. N. No. S 81 of the Supplement dated 26th July 1946 the appellant could have been brought to trial before the High Court, which is provided with power to impose a maximum sentence of 2 years imprisonment or a fine of $20,000.00 or both. We agree that the learned District Judge was right in taking a serious view of this case, and that it called for a severe financial penalty — which it would have been within the power of the High Court to inflict. But we cannot agree that he properly exercised the discretion which the amendment gives him when he made an order for the forfeiture of goods amounting in value to seventy times the maximum fine which he could impose. The amendment gives him no power to order a partial forfeiture. Then in this case he should have made no order for forfeiture, because such an order was tantamount to evading the limit which is clearly intended to be placed upon his penal powers. In a case where the value of the goods so greatly exceeds the maximum fine which a District Court is empowered to impose, if it is considered that forfeiture of the goods should be part of the penalty, then in our opinion the case should be brought before the High Court which is vested with more extensive powers.

Nor do we agree with the learned District Judge when he says that the four charges were so related that he ought not to impose more than a nominal penalty for the second, third and fourth charges. As he properly says in paragraph 4 of his Grounds of Decision: "This was not merely a case of attempting to export goods without a licence but of attempting to export them by pretending that sulphate of ammonia was sago flour." By making the two false declarations in Ex. C and D the appellant obtained permits to export 1,100 bags as sago flour. That is the subject of charge 2. By making the false declaration in Ex. H he attempted, unsuccessfully, to obtain another permit to export a further 500 bags as sago flour. This is the subject of charge 4. It is one thing to attempt to export goods without a permit. It is quite another thing to obtain, or attempt to obtain, a permit by falsely declaring the goods to be other than what they are. In one case the law is broken by being ignored. In the other the law is broken by a positive act of deceit. We agree that the omission to furnish a proper description of the goods to the Registrar, whch is the subject of charge 3, is so related to charge 1 that it calls for no more than a nominal penalty. But the offences of making the false declarations in charges 2 and 4 are quite separate and distinct from the offence of attempting to export in charge 1, and should have been punished accordingly.

The order for forfeiture is quashed. For the fines imposed on charges 1, 2 and 4 we substitute fines of $1,000.00 on each of those three charges, or, in default of payment, 6 months R.I. on each charge. The sulphate of ammonia is ordered to be restored to the appellant.

Murray-Aynsley, C. J. : — I agree.

Gordon-Smith, J. : — I agree.

Order of Forfeiture Quashed, Sentence Altered.

QUINN AND HOWLAND v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J., Evans and Gordon-Smith, JJ.) May 27, 1949]

[Singapore — Cr. App. No. 1 of 1949]

Criminal Procedure Code, Ss. 176 and 177 — Charge of one offence — Conviction for different offence — Legality of — Commission of latter offence appearing in evidence.

The two appellants were charged as follows:—

"That you, (1) James John Quinn, and (2) Robert Howland, on or about the 12th day of May, 1948, at or near Tanglin Road, Singapore, did commit robbery of a motor-car, No. S. 6841, of the approximate value of $2,000/- the property of one Lee Kong Eng and then in his possession, and at the time of committing the said robbery you did voluntarily cause hurt to the said Lee Kong Eng and thereby committed an offence punishable under Section 394 of the Penal Code (Cap. 20)"

At the conclusion of the trial the Jury found the appellants not guilty of robbery of the motor-car but guilty of attempted robbery of the money. This verdict was fully supported by the evidence. The appellants were convicted. This appeal was against conviction and sentence.

Held, that the verdict was one that might lawfully be returned by virtue of S. 177 of the Criminal Procedure Code.

Begu v. King Emperor[1] followed.

Cases referred to :—

(1) *Begu v. King Emperor*, 52 I.A. 191; A.I.R. 1925 P.C. 130.

(2) *Maher Sheikh v. Emperor*, I.L.R. 59 Cal. at p. 14.